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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. —

SECURITIES AND EXCHANGE COMMISSION, PETITIONER

v.

LOUISIANA PUBLIC SERVICE COMMISSION, MIDDLE SOUTH UTILITIES, INC., AND LOUISIANA POWER & LIGHT COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Solicitor General, on behalf of the Securities and Exchange Commission, prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above-entitled case on June 30, 1956.

OPINIONS BELOW

The opinion of the Court of Appeals (App. A, *infra*, pp. 25–35) is not yet officially reported. The findings and opinion of the Securities and Exchange Commission dated September 13, 1955, are unreported and are printed at R. 110. The findings and opinion of the Securities and Exchange Commission dated March 20, 1953, are unreported and are printed at R. 74.

JURISDICTION

The judgment of the Court of Appeals was entered on June 30, 1956 (App. A, *infra*, p. 35). The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether (a) the statutory provision authorizing the revocation or modification of any final order previously entered under § 11 (b) of the Public Utility Holding Company Act of 1935, upon a showing that "the conditions upon which the order was predicated do not exist", relates to a situation where there has been no change in conditions since the entry of the original order, and (b), if so, whether legal determinations made in connection with the original order become reviewable in the review of a Securities and Exchange Commission order denying a petition to reopen the former proceeding.

2. Whether the "loss of substantial economies" that would result from the divestment of a public-utility system from the "single integrated public-utility system" to which a registered holding company is normally limited by § 11 (b) (1) of the Act—a prerequisite to retention by the holding company of "additional systems"—(a) applies solely to the additional systems sought to be retained and not to the principal system and (b) must be of a nature as to cause such a serious economic impairment of the additional system that it would render it incapable of independent economic operation.

STATUTE INVOLVED

The statutory provisions involved are §§ 2 (a) (29); 11 (b); and 24 (a) of the Public Utility Holding Company Act of 1935, 49 Stat. 804, 15 U. S. C. §§ 79b (a) (29); 79k (b); and 79x (a). They are printed in Appendix B, *infra*, pp. 36–40.

STATEMENT

On March 20, 1953, the Securities and Exchange Commission, pursuant to § 11 (b) (1) of the Public Utility Holding Company Act of 1935 (the "Act") (App. B, *infra*, pp. 37–38) ordered, *inter alia*, that Middle South Utilities, Inc. ("Middle South"), a registered holding company, and its subsidiary, Louisiana Power & Light Company ("Louisiana Power"), take appropriate steps to divest the non-electric properties of Louisiana Power, consisting primarily of gas properties (R. 109).[1] In its findings, the S. E. C. held that the electric properties of the four operating companies of the Middle South system, namely, Arkansas Power & Light Company, Mississippi Power & Light Company, New Orleans Public Service, Inc., and Louisiana Power, constituted a single integrated electric utility system, as defined in § 2 (a) (29) (A) of the Act (App. B, *infra*, pp. 36–37), and were retainable by Middle South under the standards of § 11 (b) (1) (App. B, *infra*, pp. 37–38) (R. 93). The S. E. C. found, however, that the gas properties of Louisiana Power must be divested since (a) they did not constitute,

[1] See *Middle South Utilities, Inc.*, Holding Company Act Release No. 11782 (1953) (R. 74).

together with the electric properties of the Middle South system, a "single integrated public-utility system" within the standards of § 2 (a) (29) of the Act; and (b) they did not satisfy the proviso to § 11 (b) (1) for retention as an integrated system additional to the integrated electric utility system, since, if divested, there would be no loss of substantial economies as required by Clause (A) of the proviso (R. 93–100).

The March 20, 1953, order was entered after a full hearing at which Middle South and Louisiana Power appeared, adduced evidence, and presented arguments to support the position that the gas properties of Louisiana Power satisfied the proviso to § 11 (b) (1) for retention by Middle South as an additional integrated public-utility system. The Louisiana Public Service Commission ("Louisiana Commission"), respondent herein and petitioner below, did not appear although it received actual notice of the proceeding by registered mail (R. 113).

No petition to review the March 20, 1953, order was filed within the 60-day period provided by § 24 (a) of the Act (App. B, *infra*, pp. 39–40).

Respondent Louisiana Commission exhibited no interest in the S. E. C. determination until after an application-declaration had been filed by Louisiana Power with the S. E. C. on November 10, 1954, looking toward compliance with the March 20, 1953, order (R. 112) by proposing that the gas properties be transferred to a separate new corporation owned by Louisiana Power and that, thereafter, Louisiana Power's hold-

ings of the new corporation's stock be disposed of (R. 112). In response to a notice issued by the S. E. C. advising that interested persons could request a hearing on the application-declaration,[2] respondent Louisiana Commission on December 22, 1954, requested a public hearing thereon and in addition requested that the S. E. C. reopen the record in the earlier § 11 (b) (1) proceeding (R. 51–52). At the request of the S. E. C., the Louisiana Commission filed an offer of proof with exhibits (R. 113) and a brief in support of its request to reopen the record (R. 113). Nothing was offered to show that conditions had changed since the previous order has been issued. Instead, an attack was made on the factual conclusions of the S. E. C.'s findings and opinion upon which the 1953 order was entered and upon the S. E. C.'s legal interpretation, *inter alia*, of the phrase "loss of substantial economies" found in Clause (A) of § 11 (b) (1) of the Act.

After receipt of the offer of proof, the S. E. C. published a notice with respect to the Louisiana Commission's request,[3] heard oral argument thereon, and by order of September 13, 1955, denied the request to reopen.[4] In holding that there was no basis for reopening the proceeding, the S. E. C. emphasized in its findings that the offer of proof had not alleged

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[2] *Louisiana Power & Light Company*, Holding Company Act Release No. 12740 (1954).

[3] *Middle South Utilitites, Inc.*, Holding Company Act Release No. 12892 (1955) (R. 65).

[4] *Middle South Utilities, Inc.*, Holding Company Act Release No. 12978 (1955) (R. 110).

"changed circumstances justifying a modification" (R. 114).

The Louisiana Commission then filed its petition to review this order of September 13, 1955, in the court below and also stated that it sought review of the S. E. C.'s earlier order of March 20, 1953 (R. 6, 12).

The court below not only reversed the S. E. C.'s order denying the request to reopen the proceeding but also held that legal determinations made by the S. E. C. in its 1953 decision were erroneous (App. A, *infra*, pp. 25–35). Specifically, it found that the S. E. C. in refusing to reopen the earlier proceeding had misinterpreted the penultimate sentence in § 11 (b) providing that the S. E. C. might revoke or modify a previous order entered under that subsection if "it finds that the conditions upon which the order was predicated do not exist" (App. A, *infra*, pp. 29–30). With respect to the 1953 decision, the court held that the S. E. C. had misinterpreted Clause (A) of § 11 (b) (1) in holding that the phrase "loss of substantial economies" should be interpreted to mean a loss only to the additional system to be divested and not to the electric properties which constitute the principal system retainable by the registered holding company. In addition, the court disagreed with the test applied by the S. E. C. in 1953 that a loss is not "substantial" within the meaning of the statute if it would not cause "a serious economic impairment of the system" required to be divested such as to render it incapable of independent economic operation (R. 96). The court remanded the proceeding to the

S. E. C. for its consideration in light of the court's interpretation of the Act (App. A, *infra*, p. 34).

REASONS FOR GRANTING THE WRIT

The Court of Appeals has erroneously overruled in three particulars long-standing constructions placed by the S. E. C. on provisions of § 11 (b) of the Act. In at least one of these instances, the opinion below is in conflict with that of the Court of Appeals for the District of Columbia Circuit. If unreversed, these determinations will substantially interfere with the proper administration by the S. E. C. of § 11, recognized by this Court as the "very heart of the title." *North American Company* v. *S. E. C.*, 327 U. S. 686, 704, n. 14.

I

A. The Court relied upon an erroneous construction of the last two sentences of § 11 (b) to justify its review of determinations embodied in a § 11 (b) (1) order from which the time for review had long since expired. The penultimate sentence of § 11 (b) (App. B, *infra*, p. 39) provides that the S. E. C. "may by order revoke or modify any order previously made under this subsection, if, after notice and opportunity for hearing, it finds that the conditions upon which the order was predicated do not exist." Contrary to the S. E. C.'s long-standing construction that to secure modification under this provision it is necessary to offer evidence of changed conditions occurring after the entry of the original order,[5] the court in-

[5] See e. g. *Community Gas and Power Company*, 15 S. E. C. 492, 500; *West Texas Utilities Company*, 21 S. E. C. 566;

terpreted this sentence to mean that such modification may be obtained if "it can be shown that the conditions on which the order was predicated were not truly the actual conditions . . ." (App. A, *infra*, p. 30).

If the administrative interpretation is correct, the court clearly could not have entertained review in this case since the Louisiana Commission, in its offer of proof before the S. E. C., did not present any facts indicating a subsequent change in conditions. And if the penultimate sentence of § 11 (b) is not available as a statutory basis for appeal, a denial of an out-of-time petition for rehearing before the S. E. C. is certainly not reviewable. A decision to the contrary would be in direct conflict with *Skowhegan Savings Bank* v. *S. E. C.*, 201 F. 2d 702, 705 (C. A. D. C.), where it was held that denial of a petition for rehearing of an order under § 11 (e) of the Act designed to effect compliance with § 11 (b) (1) "could not serve to enlarge the statutory period for appeal. The denial of reconsideration is not in and of itself appealable under the statute."[6] Indeed it may be that

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Middle West Corporation, 22 S. E. C. 87; *North American Company*, 28 S. E. C. 742, 747–756; *International Hydro-Electric System*, 30 S. E. C. 631; *General Public Utilities Corporation*, Holding Company Act Release No. 13116, page 5–11 (1956).

[6] *Cf.*, *I. C. C.* v. *City of Jersey City*, 322 U. S. 503, 514–519; *Wayne United Gas Co.* v. *Owens-Illinois Glass Co.*, 300 U. S. 131, 137; *Comboy* v. *First National Bank of Jersey City*, 203 U. S. 141, 145; *Nealon* v. *Hill*, 149 F. 2d 883 (C. A. 9), certiorari denied, 326 U. S. 753; *Clarke* v. *Hot Springs Electric Light & Power Co.*, 76 F. 2d 918, 921 (C. A. 10), certiorari denied, 296 U. S. 624.

an order under the penultimate section of § 11 (b) denying a request for a rehearing is never reviewable under the authorities cited in footnote 6, *supra,* since that sentence in terms refers only to orders modifying or revoking earlier orders—not to orders which deny a request to modify or revoke.

It is the S. E. C.'s view that the penultimate sentence was inserted so it would be clear that, despite the fact that § 11 (b) orders are final and binding determinations and are appealable, they might be modified where subsequent changes of circumstances warrant such modification. This is in complete accord with *Central & South West Utilities Co.* v. *S. E. C.,* 136 F. 2d 273, 275 (C. A. D. C.), where it was stated that "Section 11 (b) authorizes the Commission to revoke or modify its order, after notice and hearing, in response to changed conditions . . ." It is also in accord with the reference to this clause in *American Power & Light Company* v. *S. E. C.,* 329 U. S. 90, 121, where the Court upheld a Commission order directing the dissolution of certain holding companies but stated that during the period of compliance with these orders the companies were not precluded "from seeking revocation of the dissolution orders on a showing that the conditions upon which the orders were predicated do not exist." Nowhere in its opinion did the Court indicate that the S. E. C.'s record was possibly incomplete and the Court must have been referring to changes in conditions brought about by reason of subsequent steps to be taken by holding company systems looking toward compliance with the dissolution orders.[7]

[7] In its brief to this Court in that case, the S. E. C. had stated that if petitioners could be transformed into holding companies

Assuming that an order *refusing* to reopen a previous proceeding is reviewable at all, the review should be limited to a consideration of whether the S. E. C. abused its discretion in failing to reopen the proceeding and not to legal determinations made in connection with the earlier order. Surely, persons aggrieved should not be permitted to do indirectly what they cannot do directly, *i. e.*, secure review of the original order after the expiration of the 60 days provided by § 24 (a) (App. B, *infra*, p. 39–40), by obtaining review of an order under § 11 (b) refusing to reopen the original proceeding. In this connection, it should be noted that under § 24 (a), even where a timely petition for review is filed, no new evidence may be considered unless "application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Commission." See *Central & South West Utilities Co.* v. *S. E. C.*, *supra*, 136 F. 2d at 275, where such an application was denied. The route pursued by the Louisiana Commission and sanctioned by the court below completely circumvented this requirement; the Louisiana Commission made no attempt to show "reasonable grounds for failure to adduce . . . evidence in the proceeding before the Commission."

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which served the function of tying together properties satisfying the standards of Section 11 (b) (1) and needing a parent holding company, and if it appeared that either of petitioners would be an appropriate corporate vehicle for such purpose, then there would be room for modification of its orders under the express provisions of Section 11 (b) applicable in the event of change of circumstance." (Brief for the S. E. C. in Nos. 6 and 7, October Term 1945, pp. 133–134.)

B. 1. This holding of the Court of Appeals on the right of reopening a § 11 (b) proceeding, if allowed to stand, will destroy the finality of § 11 (b) determinations, which up to this decision have been generally assumed to be "final and binding determinations of the result to be achieved." *Commonwealth & Southern Corp.* v. *S. E. C.*, 134 F. 2d 747, 751 (C. A. 3).

The resulting delay and uncertainty will interfere with the mandate of Congress directing the S. E. C. to require compliance with the standards of § 11 (b) "as soon as practicable." It is primarily through the entry of § 11 (b) orders that the S. E. C. has been able to secure the cooperation of holding company systems in working out their problems under that section. To the extent that these orders are deprived of their finality, it can be expected that the voluntary compliance contemplated by Congress[8] will be substantially retarded. Furthermore, rehearings, which prior to the decision below would not have been granted, will now be required, necessitating long preparation and often involving protracted administrative proceedings and possible time-consuming appeals. And in future § 11 (b) proceeding the staff of the S. E. C., to reduce the possibility of having the proceeding reopened, will probably be required to seek out and place in evidence all possible facts bearing on all issues, even including facts required to disprove that a company comes within an exception to the general standards required by § 11 (b)—con-

[8] See § 11 (e) of the Act. See also S. Rep. 621, 74th Cong., 1st Sess., p. 13.

trary to accepted principles relating to the burden of proof.[9]

In view of the interest of holding company managements and their stockholders in retaining the substantial properties and security interests which are the subject of § 11 (b) orders, it may be expected that attempts will now be made to reopen existing § 11 (b) (1) and § 11 (b) (2) orders of the S. E. C. on the contention that they must be reconsidered in the light of the standards set by the court below—both the procedural standards for reopening, and with respect to § 11 (b) (1), the substantive standards discussed below (*infra*, pp. 18–23). The apparent ease by which any of the thousands of security holders of any registered holding company[10] may secure reopening of an earlier § 11 (b) order will greatly increase the probability of requests to reopen, especially in light of the substantial fee a security holder would receive from the registered holding company for upsetting a previous determination by the S. E. C. under § 11.[11] Moreover, a security holder residing in the Fifth Circuit—who can obtain review in that jurisdiction—would be the one most likely to file a petition to review, in view of the opinion in this case.

Of the utmost importance to all registered holding company systems, particularly those whose status under § 11 (b) (1) has been thought to have been fully

[9] See *e. g.*, *Schlemmer* v. *Buffalo, Rochester & Pittsburgh Ry. Co.*, 205 U. S. 1, 10.

[10] According to reports filed with the S. E. C., Middle South has over 27,000 holders of its common stock.

[11] See *e. g.*, *Standard Gas and Electric Company*, Holding Company Act Release No. 12878 (1955).

and finally determined long ago, is the prime fact that the opinion below places a cloud upon the findings of the S. E. C. that those systems satisfy the standards of § 11 (b) (1). For example, in situations where the Commission has in the past found that properties may be retained together as a "single integrated public utility system" within the meaning of §§ 11 (b) (1) and 2 (a) (29), it is now possible that upon the motion of a State Commission or other interested person such a proceeding, which both the S. E. C. and the industry assumed to be closed, might be reopened on the ground that the original record before the S. E. C. was incomplete.[12]

2. The extent of the impairment to the S. E. C.'s functions as the agency designated to administer the Act is of considerable moment when viewed in the light of the number of utility systems having substantial properties and security interests which might seek reopenings of § 11 (b) orders in accordance with the opinion below. In the instant case alone, as pointed out in the S. E. C.'s opinion of March 20, 1953, some 55,000 customers in 48 Louisiana communities are supplied with gas from the facilities here involved. As at December 31, 1952, the gross gas utility assets required to be divested were stated on the company's books at over $7,500,000 and the total gas operating

[12] In this connection, it may be noted that Middle South Utilities, Inc., intervenor below, in its brief filed with the court below (at p. 3), objected to any possible reconsideration of the status of the entire Middle South system under § 11 (b) (1) which, it stated, would unsettle "all the issues which were set at rest after complex proceedings only three years ago."

revenues for the year 1952 obtained therefrom were almost $4,000,000 (R. 94, 104).

At the present time, there are outstanding four other uncomplied-with § 11 (b) (1) orders directed to registered holding companies.[13] The gross plant of the nonretainable properties which are the subject of these orders aggregates over $96,500,000.[14] Although no court review was sought in three of these proceedings and the time therefor has long since expired, it may well be that review of the S. E. C.'s determinations will now be sought through the device of filing with the S. E. C. a dilatory petition for reopening. Even in the *Philadelphia Company* case, where there has already been court review, the opinion of the court below might sanction a reopening of the S. E. C. proceeding and additional review at this late

[13] *Cities Service Company*, 17 S. E. C. 5, Holding Company Act Release No. 5350 (1944); *Eastern Utilities Associates*, 31 S. E. C. 329, Holding Company Act Release No. 9784 (1950); *Commonwealth & Southern Corporation*, 26 S. E. C. 464; *Philadelphia Company*, at 28 S. E. C. 35, aff'd *sub nom Philadelphia Co. v. S. E. C.*, 177 F. 2d 720 (C. A. D. C.).

[14] The properties required to be divested and the amount of the gross plant of such properties as of December 31, 1955, as shown in reports filed by the registered holding companies with the S. E. C., are as follows:

Registered holding company system	Company whose properties are required to be divested	Gross plant
Cities Service Company	Dominion Natural Gas Co., Ltd	$23, 134, 715
Eastern Utilities Associates	Blackstone Valley Gas and Electric Co.	9, 089, 438
Commonwealth & Southern Corporation.	Georgia Power Co.	190, 124
The Philadelphia Company*	Pittsburgh Railways Co.	64, 179, 243
		96, 593, 520

*Philadelphia Co. owns 50.89% of the common stock of Pittsburgh Railways Co.

date. It should be noted that in one of these cases, *Eastern Utilities Associates,* the problem of whether or not there would be a "loss of substantial economies" within the meaning of Clause (A) was specifically involved and it might now be urged that this should be reinterpreted in accordance with the substantive holdings below.

In addition, the S. E. C. has specifically reserved jurisdiction in other registered holding company systems over the question of the retainability, under the standards of § 11 (b) (1), of certain gas properties.[15] In this very case, in its March 20, 1953, order involved here the Commission did not release its § 11 (b) (1) jurisdiction over the question as to whether the gas and transportation properties operated by New Orleans Public Service Inc., a sister company of Louisiana Power, are retainable by the Middle South system under the standards of § 11 (b) (1) (R. 102, 109).[16] Further, there are situations in still other registered holding company systems, which have

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[15] *North American Company*, Holding Company Act Release No. 10320 (1950); *Union Electric Company of Missouri*, Holding Company Act Release No. 12262 (1953); *Columbia Gas & Electric Corporation*, 17 S. E. C. 494; *Standard Oil Company (New Jersey)*, 14 S. E. C. 342.

[16] In this connection, the effect of the final sentence of the opinion of the court below is not clear. It states with respect to its remand to the S. E. C.:

> "The further consideration to be given to this matter by the Securities and Exchange Commission is restricted to the relations between Middle South, the Louisiana Power and Electric Company and the gas system, and nothing said in this opinion shall be taken to authorize a reconsideration of any other features of the March 20, 1953 order."

Commonwealth & Southern Corporation, 26 S. E. C. 464; *Philadelphia Company*, at 28 S. E. C. 35, aff'd *sub nom Philadelphia Co.* v. *S. E. C.*, 177 F. 2d 720 (C. A. D. C.).

[14] The properties required to be divested and the amount of the gross plant of such properties as of December 31, 1955, as shown in reports filed by the registered holding companies with the S. E. C., are as follows:

Registered holding company system	Company whose properties are required to be divested	Gross plant
Cities Service Company	Dominion Natural Gas Co., Ltd	$23,134,715
Eastern Utilities Associates	Blackstone Valley Gas and Electric Co.	9,089,438
Commonwealth & Southern Corporation.	Georgia Power Co.	190,124
The Philadelphia Company*	Pittsburgh Railways Co.	64,179,243
		96,593,520

*Philadelphia Co. owns 50.89% of the common stock of Pittsburgh Railways Co.

not yet had proceedings directed to them, where there appear to be § 11 (b) (1) problems.[17]

Prospectively, various situations might well occur which would give rise to problems not now existing under §§ 11 (b) (1) or 11 (b) (2) and as to which the procedural and, with respect to § 11 (b) (1), substantive interpretations of the court below would become applicable. For example, as to § 11 (b) (1), a registered holding company system having only electric properties might acquire the voting stock of a non-affiliated company which has both gas and electric properties,[18] or it could be claimed that the registered system is extending its permissible operations beyond the area permitted by § 11 (b) (1).[19] With respect to § 11 (b) (2), a registered holding company, which today meets the standards of that subsection, might acquire less than all of the outstanding stock of a public-utility company, requiring that action be taken

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[17] (a) *Delaware Power & Light Company* (system includes both gas and electric properties); (b) *New England Electric System* (system includes both gas and electric properties); (c) *Utah Power & Light Company* (system has non-interconnected electric properties).

[18] The Commission could approve the acquisition of the stock on the ground the electric properties of the acquired company were integrated with the electric properties of the acquiring company, as required by § 10 (c) (2) of the Act, and reserve jurisdiction as to whether the gas properties satisfy the additional system test of § 11 (b) (1). Such a situation arose in *North American Company*, Holding Company Act Release No. 10320 (1950).

[19] On September 18, 1956, Public Service Company of Indiana, Inc., petitioned the S. E. C. to order American Gas & Electric Company, a registered holding company, to cease the contemplated construction of a generating station in the service area of Public Service Company of Indiana, Inc.

under that subsection.[20] Or a company's financial situation can so deteriorate that it no longer meets the § 11 (b) (2) standards.[21]

In sum, the fact is that, even though the Public Utility Holding Company Act has been on the books for two decades, the procedural ruling below creates a real danger that a substantial amount of the work which has been done will now be challenged, thus imposing (at the least) a heavy burden and fostering further delay. The problem for future proceedings will also be great if the Commission and the parties are to avoid successive reopenings and to achieve the proper measure of finality under the Act.

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[20] The Commission could approve the acquisition, reserving jurisdiction with respect to whether or not the creation of the minority interest brought about an undue complexity or an inequitable distribution of voting power contrary to the standards of § 11 (b) (2). This situation occurred in *Union Electric Company of Missouri*, Holding Company Act Release No. 12262 (1953). See also *Ohio Edison Company*, 30 S. E. C. 613, 622–623 (1949); *The Southern Company*, Holding Company Act Release No. 10055, pages 14–15 (1950); *American Gas and Electric Company*, Holding Company Act Release No. 10294, page 14 (1950); and *Central Louisiana Electric Company, Inc.*, Holding Company Act Release No. 10430, page 19 (1951). *Cf. Cities Service Company*, Holding Company Act Release No. 13254, page 22 (1956).

[21] This occurred in the Long Island Lighting Company system, where the Commission in 1936 had granted it an exemption from the provisions of the Act pursuant to § 3 (a) (1) at a time when the system was in sound financial condition. *Long Island Lighting Co.*, 1 S. E. C. 345. Subsequently, in 1945, after substantial dividend arrearages had accumulated on the preferred stock of all the system companies, the Commission modified the exemption and specifically made the provisions of § 11 (b) (2) applicable. *Long Island Lighting Co.*, 18 S. E. C. 717. Thereafter, in 1948 the Commission issued an order pursuant to § 11 (b) (2) directing the elimination of the preferred stocks of the various system companies. *Long Island Lighting Co.*, 28 S. E. C. 482.

3. The determination of the court below as to reopening, if not reviewed by the Court at this time, will not again be reviewable in this proceeding. If the Court should deny certiorari, then the S. E. C. will be required, in view of the mandate of the Court of Appeals, to (a) reopen the proceeding, and (b) accept evidence as to the loss of economies to the principal system. Regardless of what decision the Commission makes in the reopened proceeding, the issues as to the meaning of the penultimate sentence of § 11 (b) will not again be in issue before the Court of Appeals. The proceeding will have been reopened pursuant to the court's order, and the question of reopening will therefore have dropped out of the case. And, as we point out below (*infra*, pp. 23), the substantive legal issues as to the bearing of "loss of substantial economies" will also, in effect, be mooted.

II

A. With respect to the 1953 determinations of the S. E. C. which the court below held substantively erroneous, the decision is in conflict with those of the Court of Appeals for the District of Columbia Circuit in *Philadelphia Co.* v *S. E. C.*, 177 F. 2d 720 (C. A. D. C.) and *Engineers Public Service Co.* v. *S. E. C.*, 138 F. 2d 936 (C. A. D. C.).[22] These determinations involved the meaning of the phrase "without the loss of substantial economies" which is contained in Clause (A) of the proviso to § 11 (b) (1) (App. B. *infra*, p. 37).

[22] Vacated as moot and remanded on stipulation. 332 U. S. 788.

§ 11 (b) (1), as this Court pointed out in *North American Co.* v. *S. E. C.*, 327 U. S. 686, 696–697, "in essence . . . confines the operations of each holding company system to a single integrated public utility system with provision for the retention of additional systems only if they are relatively small, located close to the single system *and unable to operate economically under separate management without the loss of substantial economies;* . . ." [emphasis added]. The italicized language refers to the condition, here involved, for retention of "additional integrated public-utility systems," *i. e.*: "(A) Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system." In interpreting this language, it was pointed out in the *Engineers* case, 138 F. 2d at 944:

> ". . . Congress was not so much concerned with the profit motive of utilities as with the evils that had become prevalent through combinations of utilities. It was first concerned with the wiping out of the evils which the practice of utility combinations had produced, and Congress only consented to dull the blade of its chosen weapon in proved hard cases."

In the *Philadelphia Co.* and *Engineers* cases, as in the instant one, the parties contended that the Commission had unduly limited the meaning of the phrase "loss of substantial economies" so as to preclude the retention of their gas properties as an additional system. The S. E. C. in all these cases had consistently defined the term "substantial economies" to

mean that they be of sufficient importance that their loss would cause a serious economic impairment of the system such as to render it incapable of independent economic operation. This definition was accepted by the Court of Appeals in the *Philadelphia Co.* and *Engineers* cases. It stated in the *Philadelphia Co.* case, 177 F. 2d at 725:

> "In the Commission's view, economies are not 'substantial' unless their loss 'would cause a serious economic impairment of the system' such as to 'render it incapable of independent economical operation' . . . We cannot say the Commission's understanding of the term 'substantial economies' is wrong. We construed it similarly in the Engineers case."

The Commission's construction, as pointed out in *Philadelphia Co.*, is fully supported by the legislative history of the Act.[23]

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[23] See *Philadelphia Co.* v. *S. E. C.*, 177 F. 2d at 725, citing H. R. Rep. No. 1903, 74th Cong., 1st Sess. 71 (1935) and 79th Cong. Rec. 14,479 (August 24, 1935). The first cited authority, the Statement of the Managers on the Part of the House accompanying the Conference Report, states that Clause (A) was inserted to make a ". . . provision to meet the situation where a holding company can show a real economic need on the part of additional integrated systems for permitting the holding company to keep these additional systems . . . ." The other, a Statement by Senator Wheeler, Chairman of the Senate Committee on Interstate and Foreign Commerce, and in charge of the bill, states that the "furthest concession" from the general rule of limiting a holding company to one integrated system "would be to permit the Commission to allow a holding company to control more than one integrated system if the additional systems . . . were so small that they were incapable of independent economical operation . . ."

In rejecting the interpretation of the S. E. C. and the Court of Appeals for the District of Columbia Circuit, the court below stated that this construction "is not one that is to be inflexibly used in the application of Clause A of the saving section" (App. A, *infra,* p. 34) but suggested no circumstances existing here which might account for the application of a different construction.

2. The court below also rejected the S. E. C.'s interpretation that the loss of substantial economies must relate only to the loss to the additional system sought to be retained and not to any loss of economies to the retainable principal integrated system (R. 97). This administrative construction is likewise supported by the legislative history[24] and appears to have been assumed by this Court. See the quotation at page 19, *supra,* from *North American Co.* v. *S. E. C.* 327 U. S. 686, 696–697. A specific holding that only losses to the additional system should be considered was also made by the S. E. C. in the *Philadelphia Co.* case, 28 S. E. C. 35, 52. In affirming the order in that case, the Court of Appeals for the District of Columbia Circuit presumably accepted this construction since, despite the fact that this question was fully briefed by the parties, the court in its rather extended opinion made no reference to the alleged savings to the principal system except to comment in a footnote that the company's witness "also testified" as to the amount that separation would increase the expense of the electric system (177 F. 2d at 724, n. 17). In the *Engineers* case also, the District of Columbia Circuit

[24] See footnote 23, *supra.*

appears to have applied this construction. The court pointed out (138 F. 2d at 944) that the question involved was "whether or not the facts as they were revealed at the hearing give reasonable support to the Commission's conclusion that 'substantial economies' would not be saved to 'Virginia Gas' by reason of 'Virginia Electric's' continued control of the former," and the court indicated that the substantial economies "must relate to the healthful continuing business and service *of the freed utility*" (emphasis added).

B. 1. The Fifth Circuit's substantive holdings, like its procedural ruling, will have a serious impact upon the Commission's administration of the Act. In future proceedings,[25] in order to comply with these holdings in § 11 (b) (1) proceedings where the retainability of additional systems is involved, as in the instant case, the S. E. C.'s staff will have to make detailed cost studies based upon figures derived from the companies' own records and therefore more accessible to the companies. Moreover, in such a case, the S. E. C. will have to accept and consider a type of evidence with respect to the standards of Clause (A) of § 11 (b) (1) which it has heretofore deemed and still deems irrelevant.[26] The administrative proceedings will necessarily be burdened and prolonged.

With respect to the past, the Fifth Circuit's ruling on reopening combines with its substantive holdings on "substantial economies" to create the potenti-

[25] See *supra*, pp. 13–17, for the potential future proceedings.

[26] See *supra*, pp. 12–13, for the strong possibilities of review of § 11 (b) cases in the Fifth Circuit.

ality of lengthy, detailed, and unsettling hearings involving large public-utility systems with enormous assets. See *supra*, pp. 11, 13–16.

2. Like the procedural issue (*supra*, p. 18), these substantive issues, if they are to be reviewed, should be reviewed at this stage. As to the meaning of Clause (A) of § 11 (b) (1), the S. E. C. will be required under the mandate of the court below to accept evidence as to the loss of economies to the principal system. If the Commission should determine that the evidence satisfies the standard of "loss of substantial economies" as interpreted below, it plainly could not seek review itself. If it should decide that the proffered evidence does not satisfy the standard of "loss of substantial economies" as interpreted below, the only question for review in that court would be whether there is substantial evidence to support the administrative determination, and it is not at all clear whether this Court would consider at that stage the question of the appropriate legal standard to be applied. It is in circumstances like these that the Court has indicated that it will review even an interlocutory decision which involves an issue "fundamental to the further conduct of the case." *United States* v. *General Motors Corp.*, 323 U. S. 373, 377; *Land* v. *Dollar*, 330 U. S. 731, 734, fn. 2.

CONCLUSION

For the foregoing reasons, certiorari should be granted to review the judgment of the court below.

Respectfully submitted,

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THOMAS G. MEEKER,
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SEPTEMBER 1956.

APPENDIX A

1. Opinion of the Court of Appeals

In the United States Court of Appeals for the Fifth Circuit

No. 15820

Louisiana Public Service Commission, petitioner

versus

Securities and Exchange Commission, respondent

Petition for Review of Order of the Securities and Exchange Commission

(June 30, 1956.)

Before Rives, Tuttle and Jones, Circuit Judges.

Tuttle, Circuit Judge: This is a petition to review an order of the Securities and Exchange Commission denying a petition to reopen and receive new evidence in proceedings which culminated in a Commission order of March 20, 1953, directing a public utility holding company and three of its subsidiaries to dispose of their direct and indirect ownership in certain non-electric properties. The Securities and Exchange Commission opposes the petition for review on the grounds that the denial of a petition to reopen proceedings is not a reviewable order under Section 24 (a) of the Public Utility Holding Company Act, 15, U. S. C. A. § 79x, and that, in any event, the petition to reopen was without merit.

The Securities and Exchange Commission issued an earlier order regarding these properties on March 7,

1949, when it approved a plan for the dissolution of the Electric Power & Light Corporation and the creation of Middle South Utilities, Inc., which acquired from the Electric Power & Light Corporation the latter's sole ownership of the Arkansas Power & Light Company, the Louisiana Power & Light Company, and the Mississippi Power & Light Company. It also acquired from the Electric Power & Light Corporation 95.2% of the common stock of New Orleans Public Service, Inc., and all of the securities of the Gentilly Development Company, a non-utility land company. The Securities and Exchange Commission, in approving the plan, reserved jurisdiction to make further findings under Section 11 of the Act, 15 U. S. C. A. § 79k, regarding the integrated character of the electric properties of Middle South's subsidiaries, and the retainability of non-electric properties by these companies.

Subsequent to this order, the Arkansas Power & Light Company and the Mississippi Power & Light Company disposed of nearly all their non-electric properties and thereafter engaged almost exclusively in electric operations. The Gentilly Development Company disposed of its land and had only cash as a major asset. The Louisiana Power & Light Company, however, retained both electric and gas properties, and New Orleans Public Service, Inc., continued to engage in electric, gas and transportation operations. In January, 1953, the Securities and Exchange Commission issued an order convening a hearing pursuant to Section 11 (b) (1) of the Act, 15 U. S. C. A. § 79k (b) (1), to decide, inter alia, whether Middle South Utilities, Inc., and the Louisiana Power & Light Company should be required to dispose of the gas utility and non-utility assets of the Louisiana Power & Light Company, and if so, upon what terms and con-

ditions. The named respondents were Middle South Utilities, Inc., the Arkansas Power & Light Company, the Mississippi Power & Light Company, and New Orleans Public Service, Inc. A copy of the order was served upon the petitioner here, the Louisiana Public Service Commission, by registered mail. However, the Louisiana Public Service Commission did not appear, nor did any other public body or group of public security holders appear with regard to the retainability of gas properties by the Louisiana Power & Light Company.

On March 20, 1953, the Securities and Exchange Commission issued its findings and order, which required Middle South Utilities, Inc., the Arkansas Power & Light Company, the Louisiana Power & Light Company, and the Mississippi Power & Light Company to dispose of their direct and indirect ownership in non-electric properties. New Orleans Public Service, Inc., was allowed to retain its gas and transportation properties along with its electric properties, in view of the strong desire of the City of New Orleans for New Orleans Public Service, Inc., to continue unified operations, and the special character of the franchise and regulatory system in that city.

Insofar as is pertinent here, the effect of the order was to require Middle South Utilities, Inc., the Arkansas Power & Light Company, the Louisiana Power & Light Company, and the Mississippi Power & Light Company to dispose of certain steam and water properties owned by the three subsidiaries. It likewise required Middle South Utilities, Inc. and the Louisiana Power & Light Company to divest themselves of the latter's gas properties.

No petition for review of this order was filed, and the Securities and Exchange Commission set March 20, 1955 as the deadline for compliance therewith by

Middle South Utilities, Inc. and the Louisiana Power & Light Company. On November 10, 1954, the Louisiana Power & Light Company and the Louisiana Gas Service Corporation filed a joint application-declaration with the Securities and Exchange Commission, proposing that the newly incorporated Louisiana Gas Service Corporation acquire all the non-electric properties of the Louisiana Power & Light Company. The Louisiana Power & Light Company was to own all the common stock of the Louisiana Gas Service Corporation. Thereafter the petitioner here, the Louisiana Public Service Commission, requested a public hearing on the matter and also asked that the Securities and Exchange Commission reopen the record in the proceeding which had resulted in the divestment order. Upon the suggestion of the Securities and Exchange Commission, petitioner filed a detailed offer of proof and a brief in support of its request. After oral argument, the Commission, by order of September 19, 1955, denied the Louisiana Public Service Commission's request that the prior proceeding be reopened. The Louisiana Public Service Commission here challenges the legality of this order.[1]

We think the order of September 19 is reviewable. The order here involved is not of the type dealt with in *Wayne United Gas Co. v. Owens-Illinois Glass Co.*,

[1] The Louisiana Power & Light Company intervened in this court, reiterating the arguments of the Louisiana Public Service Commission. Middle South Utilities, Inc. also intervened, stating that it was in accord with the views expressed by the petitioner and the Louisiana Power & Light Company, but strongly opposing a reopening of the record which would result in reconsideration of the status of the entire Middle South system; in effect, it desired a reconsideration only of that part of the Securities and Exchange Commission's divestment order which required the Louisiana Power & Light Company and itself to dispose of the Louisiana Power & Light Company's gas properties.

300 U. S. 131, but is an order based on a procedure specifically authorized by § 79k (b) of the statute.[2] This provision was availed of by the petitioner here by requesting that the record be reopened. The fact that the Securities and Exchange Commission considered the petition, suggested that petitioner file an offer of proof, considered the proof thus offered, and made a specific finding that "no grounds for questioning our earlier conclusion . . . have been indicated" demonstrates that the Commission considered this procedure as a petition to modify the earlier order. The order denying this request is expressly reviewable.[3]

The Commission contends that the power to revoke or modify upon a finding that the conditions upon which the order was predicated *do* not exist comes into play only if a change in conditions has occurred after the entry of the earlier order.[4] The action of the Securities and Exchange Commission here indicates that it considered that it had the duty to consider the proof that related to the conditions that existed as of the time the earlier order was entered. The language of the statute does not precisely state whether the utility can ask for a modification of the

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[2] With regard to § 11 (b) proceedings, the Act provides: "The Commission may by order revoke or modify any order previously made under this subsection, if, after notice and opportunity for hearing, it finds that the conditions upon which the order was predicated do not exist. Any order made under this subsection shall be subject to judicial review as provided in section 79x of this title." 15 U. S. C. A. § 79k (b).

[3] See last sentence of section 79k (b), f. n. 2, *supra*.

[4] Extensive authority for this proposition is cited in the nature of orders by the Securities and Exchange Commission. No court decision is cited to support this construction. The language of the court's opinion in American Power Co. v. S. E. C., 329 U. S. 90, at p. 121, seems to indicate to the contrary.

earlier order by a subsequent showing that the facts were not as they were taken to be when the order was issued or whether a modification can be had only upon a showing that conditions have changed subsequent to the earlier order. The language is susceptible of the construction, however, that if, in fact, it can be shown that the conditions on which the order was predicated were not truly the actual conditions, then a modification may be sought and obtained. We hold that such modification may be based on the facts as they existed at the time of the order which is to be modified.

A review of action by the Securities and Exchange Commission denying such modification is, as we have noted, expressly provided for. Such review is thus not circumscribed by the rules applying to review of discretionary acts. In passing on any petition for revocation or modification, as provided for in § 79k (b) the normal standards by which an administrative tribunal arrives at its decision would, of course, apply. There must be a basis in fact for the decision and the facts must be applied in accordance with the proper rules of law.

Petitioner here contends that these standards were not met because, so it contends, the Commission misconstrued § 79k (b) (1)[8] in holding that the only company whose loss of substantial economies was to be considered was the projected gas company; that the loss of substantial economies to the parent Louisiana

[8] This section provides that the Commission *shall* "permit a registered holding company to continue to control one or more additional integrated public-utility systems, if, after notice and opportunity for hearing, it finds that—

A. Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system."

Power & Light Company resulting from the severance is not to be considered. The respondent agrees that such is its position. It says that it has consistently construed this section in the challenged manner. The Securities and Exchange Commission says in its brief that "The meaning of this clause is clear from the legislative history and from Securities and Exchange Commission and court decisions." In support of its position it quotes from the statement of the managers on the part of the House accompanying the Conference Report[6] and a statement made by a Senator on the floor of the Senate *after* the passage of the bill, but before the President had signed it.[7] It also cited Philadelphia Company et al, 28 S. E. C. 35, 52, and General Public Utility Corporation, Holding Company Act Release No. 10982, as its prior decisions on the point, and cited *Philadelphia Company* v. *S. E. C.* (D. C. Cir.), 177 F. 2d 720, 724, 725, as accepting without discussion the Securities and Exchange Commission's views on the matter.

We think that the language of a statute should be construed, if possible, by taking the usual intendment of the words without reference to such aids to construction as the legislative history, which may be helpful only if the language itself is not clear.

Giving to the language of § 79k (b) the meaning normally attributed to the words used, we think it

[6] This clause was inserted for the first time by the Conference Committee. This statement, as quoted in respondent's brief, was that it was a ". . . provision to meet the situation when a holding company can show a real economic need on the part of additional integrated systems for permitting the holding company to keep these additional systems. . . ."

[7] This statement made by Senator Wheeler, quoted by the respondent's brief, was that the effect of the clause "would be to permit the Commission to allow a holding company to control more than one integrated system if the additional systems . . . were incapable of economic operation . . ."

quite clear that if, in fact, there is a loss of substantial economies either to the separated utility or to the parent company, then the proviso in clause A is satisfied, for in such event it is clear that "each of such additional systems [here the gas system] cannot be operated without the loss of substantial economies [to the parent company] which can be secured by the retention of control by such holding company of such system." Since the term "loss of substantial economies" is not expressly restricted in the statute to the economies relating to the operation of the additional companies, but is in terms broad enough to include the loss of substantial economies to the holding company as well, it would require judicial legislation for the court to cut it down as contended for by the Securities and Exchange Commission.

Neither the legislative history, if we are to consider that, nor the one court decision, relied on by the respondent, discussed this precise point. We cannot permit our conclusion as to the correct construction of the Act to be overborne by discussion by another court of other features of the Act from which a contrary construction can at most only be inferred. This is too important a part of the section to be interpreted by such method. Furthermore, while we recognize the merit of respondent's contention that the interpretation placed on a law by the agency enforcing it is persuasive, no one will contend that it is not, after all, the duty of the courts to construe the acts of Congress, even if such construction differs with long accepted administrative policy.

We do not make any findings here contrary to those arrived at by the Securities and Exchange Commission. We do decide that in making its findings on the crucial question of loss of substantial economies the Securities and Exchange Commission refused to

give weight to important facts which, if as alleged by petitioner, would have presented an entirely different picture.[8]

There remains the question as to what is meant by the language "substantial economies." The Commission contends that economies are not substantial unless their loss "would cause a serious economic impairment of the system" such as "to render it incapable of independent economical operation." It cites *Engineers Public Service Co.* v. *S. E. C.* (D. C. Cir.), 138 F. 2d 936, and *Philadelphia Co.* v. *S. E. C.* (D. C. Cir.), 177 F. 2d 720, as supporting this proposition. We think neither case accepts the contention of the Securities and Exchange Commission that the words "substantial economies" must be so construed. The Engineers Public Service Co. case says "substantial economies must mean, as was said in *North American Company* v. *S. E. C.* (2 Cir.), 133 F. 2d 148, 152, 'important economies.'" To be sure there was a dissent in which Judge Soper, who wrote the opinion, favored a reversal of the order of the Securities and Exchange Commission because he thought the undisputed facts constituted a showing of "substantial economies." The majority merely felt that the evidence was not conclusive, and therefore declined to reverse the finding of the Commission. There was no specific holding by the court that the Commission's formula as to what was meant by "substantial economies" was universally applicable. Much the same is true of the later decision in the Philadelphia Company case. There the court affirmed an order of the Securities and Exchange Commission, in

[8] The offer of proof included detailed computations showing anticipated losses of $684,377 of economies to the electric Company following the dismemberment, which, when added to computed losses of $272,816 to the gas utility, constituted a sizeable, if not a substantial, figure.

which its limiting formula had been applied. The court there said " 'substantial' is a relative and elastic term." In the context of the particular case, the court then said: "We cannot find the Commission's understanding of the term 'substantial economies' is wrong."

We are convinced that the formula proposed by the Commission is not one that is to be inflexibly used in the application of clause A of the saving section. We think, as has been said by the Court of Appeals for the Second Circuit in *North American Company* v. *S. E. C.* (2 Cir.), 133 F. 2d 148, 152, and as stated in the Engineers Public Service Company case, *supra,* that the term "substantial economies" means important economies. The question of their importance must, of course, be determined by the bearing they have on the ability of the two systems to continue in the serving of the two commodities in general demand without substantial change in policy, serving practically in the same way, making substantially the same gains, suffering substantially the same losses.[9]

Finding as we do that the Commission excluded from its consideration what, if any, economies might be lost to Louisiana Power and Electric Company in its application of Clause A, and finding as we do that the commission's concept as to what constituted "substantial economies" was too rigid, it becomes necessary for us to grant the relief requested by the petitioner and remand this proceeding to the Securities and Exchange Commission for its further consideration in the light of this opinion.

An intervention has been filed in this case by Middle South Utilities, Inc., in which the intervenor strenuously objects to any action here that would cause or authorize the reopening by the Securities and Ex-

[9] See Engineers Public Service Co. v. S. E. C. (D. C. Cir.), 138 F. 2d 936, 944.

change Commission of the order of March 20, 1953, as relates to the Middle South system as a whole. The further consideration to be given to this matter by the Securities and Exchange Commission is restricted to the relations between Middle South, the Louisiana Power and Electric Company and the gas system, and nothing said in this opinion shall be taken to authorize a reconsideration of any other features of the March 20, 1953 order.

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2. JUDGMENT

Extract from the Minutes of June 30, 1956

No. 15820

LOUISIANA PUBLIC SERVICE COMMISSION

versus

SECURITIES AND EXCHANGE COMMISSION

This cause came on to be heard on the petition of Louisiana Public Service Commission for a review of an order of the Securities and Exchange Commission dated September 13, 1955, "IN THE MATTER OF MIDDLE SOUTH UTILITIES, INC., ARKANSAS POWER & LIGHT COMPANY, LOUISIANA POWER & LIGHT COMPANY, MISSISSIPPI POWER & LIGHT COMPANY, NEW ORLEANS PUBLIC SERVICE, INC., Respondents, File No. 59-100; ELECTRIC POWER & LIGHT CORPORATION, File No. 54-139; LOUISIANA POWER & LIGHT COMPANY, File No. 61-620. (Public Utility Holding Company Act of 1935)", and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the petition for review in this cause be, and the same is hereby, granted; and that this cause be, and it is hereby, remanded to the Securities and Exchange Commission for its further consideration in the light of the opinion of this Court.

* * * * *

APPENDIX B

Pertinent provisions of the Public Utility Holding Company Act of 1935 (15 U. S. C. § 79 *et seq.*, 49 Stat. 804) are as follows:

Section 2 (a) (29) (15 U. S. C. § 79b (a) (29); 49 Stat. 810):

SEC. 2. (a) When used in this title, unless the context otherwise requires—

* * * * *

(29) "Integrated public-utility system" means—

(A) As applied to electric utility companies, a system consisting of one or more units of generating plants and/or transmission lines and/or distributing facilities, whose utility assets, whether owned by one or more electric utility companies, are physically interconnected or capable of physical interconnection, and which under normal conditions may be economically operated as a single interconnected and coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation; and

(B) As applied to gas utility companies, a system consisting of one or more gas utility companies which are so located and related that substantial economies may be effectuated by being operated as a single coordinated system confined in its operations to a

single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and effectiveness of regulation: *Provided,* That gas utility companies deriving natural gas from a common source of supply may be deemed to be included in a single area or region.

Section 11 (b) (15 U. S. C. § 79k (b); 49 Stat. 820):

(b) It shall be the duty of the Commission, as soon as practicable after January 1, 1938:

(1) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such action as the Commission shall find necessary to limit the operations of the holding-company system of which such company is a part to a single integrated public-utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system: *Provided, however,* That the Commission shall permit a registered holding company to continue to control one or more additional integrated public-utility systems, if, after notice and opportunity for hearing, it finds that—

(A) Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system;

(B) All of such additional systems

are located in one State, or in adjoining States, or in a contiguous foreign country; and

(C) The continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation.

The Commission may permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public-utility systems the retention of an interest in any business (other than the business of a public-utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems.

(2) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such steps as the Commission shall find necessary to ensure that the corporate structure or continued existence of any company in the holding-company system does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holders, of such holding-company system. In carrying out the provisions of this paragraph the Commission shall require each registered holding company (and any company in the same holding-company system with such holding company) to take such action as the Commission shall find necessary in order that such holding company shall

cease to be a holding company with respect to each of its subsidiary companies which itself has a subsidiary company which is a holding company. Except for the purpose of fairly and equitably distributing voting power among the security holders of such company, nothing in this paragraph shall authorize the Commission to require any change in the corporate structure or existence of any company which is not a holding company, or of any company whose principal business is that of a public-utility company.

The Commission may by order revoke or modify any order previously made under this subsection, if, after notice and opportunity for hearing, it finds that the conditions upon which the order was predicated do not exist. Any order made under this subsection shall be subject to judicial review as provided in section 24.

Section 24 (a) (15 U. S. C. § 79x (a); 49 Sta. . 834):

Any person or party aggrieved by an order issued by the Commission under this title may obtain a review of such order in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon any member of the Commission, or upon any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall

have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission or unless there were reasonable grounds for failure so to do. The findings of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Commission shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).